

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 22-115V

MARIA SIMS,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: January 5, 2024

David John Carney, Green & Schafle LLC, Philadelphia, PA, for Petitioner.

Mark Kim Hellie, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On February 3, 2022, Maria Sims filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges she suffered a Table Injury – Shoulder Injury Related to Vaccine Administration (“SIRVA”) – as a result of her October 13, 2020 influenza (“flu”) vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On July 7, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On January 4, 2024, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$114,171.13. The award is comprised of the following: \$92,500.00 for pain and suffering, \$15,549.00 for lost wages, and \$6,122.13 for medical expenses paid by Medicaid. Proffer at 1-2. In the

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* at 2. Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award the following compensation:**

- 1. A lump sum payment of \$108,049.00 (comprised of \$92,500.00 for pain and suffering and \$15,549.00 for lost wages) in the form of a check payable to Petitioner; and**
- 2. A lump sum payment of \$6,122.13, representing compensation for satisfaction of the Commonwealth of Pennsylvania's Medicaid lien, payable jointly to Petitioner and to:**

**Commonwealth of Pennsylvania
Bureau of Program Integrity
Division of Third Party Liability Recovery Section
P.O. Box 8486
Harrisburg, PA 17105-8486
ID#: 110 161 351**

Petitioner agrees to endorse this payment to the Commonwealth of Pennsylvania.

This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

Case No. 22-115V (ECF)
CHIEF SPECIAL MASTER
CORCORAN

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Procedural History

On July 6, 2023, respondent filed a Vaccine Rule 4(c) report concluding that Maria Sims (“petitioner”) suffered an injury that is compensable under the National Childhood Vaccine Injury Act of 1986, as amended, 42 U.S.C. §§ 300aa-10 to -34 (“the Act”). ECF Doc. No. 24 at 1. Accordingly, on July 7, 2023, the Chief Special Master issued a Ruling on Entitlement, finding that petitioner was entitled to compensation under the Act. ECF Doc. No. 25 at 2.

II. Items of Compensation and Form of the Award

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$114,171.13. The award is comprised of the following: \$92,500.00 for pain and suffering, \$15,549.00 for lost wages, and \$6,122.13 for medical expenses paid by

Medicaid.¹ This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a) regarding her October 13, 2020 influenza vaccination. Petitioner agrees.²

III. Form of the Award

Respondent recommends that the compensation provided to petitioner be made through two lump sum payments as described below:

- (1) The parties recommend that compensation provided to petitioner should be made through a lump sum payment of \$108,049.00, in the form of a check payable to petitioner. Petitioner agrees.
- (2) A lump sum payment of \$6,122.13, representing compensation for satisfaction of the Commonwealth of Pennsylvania's Medicaid lien, payable jointly to petitioner and to:

Commonwealth of Pennsylvania
Bureau of Program Integrity
Division of Third Party Liability Recovery Section
P.O. Box 8486
Harrisburg, PA 17105-8486
ID#: 110 161 351

Petitioner agrees to endorse this payment to the Commonwealth of Pennsylvania.

¹ The \$6,122.13 lump sum payment represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the Commonwealth of Pennsylvania may have against any individual as a result of any Medicaid payments the Commonwealth of Pennsylvania made to or on behalf of petitioner from the date of her eligibility for benefits through the date of judgment in this case as a result of her alleged vaccine-related injury suffered on or about October 13, 2020, under Title XIX of the Social Security Act.

² Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D’ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

ALEXIS B. BABCOCK
Assistant Director
Torts Branch, Civil Division

s/ Mark K. Hellie
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DATED: January 4, 2024